

My name is Robert Garvin. I am a commissioner at the Public Service Commission of Wisconsin (PSCW). I have served in that capacity for four years. I also serve as the Chairman of the Subcommittee on Nuclear Issues and Waste Disposal of the Electricity Committee of the National Association of Regulatory Utility Commissioners (NARUC). As Chairman of the NARUC Subcommittee that focuses directly on the issues that are the subject of today's hearing, I am testifying today on behalf of that organization. In addition, my testimony reflects the views of the PSCW. On behalf of NARUC and the PSCW, I very much appreciate the opportunity to appear before you this morning. The issues that you are addressing in this oversight hearing are very important to NARUC's membership and my State, and I am grateful to have this opportunity to present our point of view concerning the progress of the Yucca Mountain project.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

NARUC's goals in the nuclear waste area are well known and have been stated before this and other Congressional committees on a number of prior occasions. NARUC believes that the federal government needs to meet its obligation under the Nuclear Waste Policy Act of 1982, as amended, to accept spent nuclear fuel from utilities and other nuclear generators in a timely manner. NARUC further believes that the nation's ratepayers have upheld their end of the bargain struck in the Nuclear Waste Policy Act by providing, either directly or through income generated on prior payments, over \$24 billion for use in constructing a nuclear waste repository. Finally, NARUC believes that the Nuclear Waste Fund should only be employed for its intended purpose and that the monies in the Nuclear Waste Fund should be utilized, along with appropriations from the Department of Defense budget, for the sole purpose of supporting the opening of the Yucca Mountain facility in a timely fashion. The basic principles underlying NARUC's approach to the nuclear waste issue provide a solid foundation for future policy decisions concerning the nuclear waste program.

The process of attempting to open a geologic repository for the storage of high-level radioactive waste, including spent nuclear fuel, has been a protracted one. As you know, the Nuclear Waste Policy Act contemplated that the proposed repository would begin to accept waste in 1998. Instead, over six years later, the Department of Energy (DOE) is still engaged in the process of attempting to license, construct, and open the proposed repository. In the meantime, the customers of the nation's nuclear facilities continue to pay the required one mill per kilowatthour fee that is intended to finance the proposed repository while, at the same time, continuing to bear the cost of on-site waste storage as

well. The nation's debt to these customers is long past due. Moreover, the Administration indicated in its FY 2003 budget request that it will cost \$500 million annually to manage government high-level radioactive waste at Department of Energy sites in the event that waste acceptance at the proposed Yucca Mountain facility is delayed past the previously scheduled 2010 opening date.

Finally, the federal courts have decided that the Department of Energy has breached its statutory and contractual obligation to take spent nuclear fuel by the date specified in the Nuclear Waste Policy Act, thereby subjecting the nation's taxpayers to significant damage liabilities that have yet to be quantified and that will continue to increase with the passage of time. In evaluating the potential impact of these liabilities on the federal budget, it is important to remember that the United States Court of Appeals for the Eleventh Circuit has determined that monies from the Nuclear Waste Fund may not be used to pay any damages ultimately awarded to the nuclear industry for breach of the Department of Energy's obligation to take nuclear waste beginning in 1998.

While there is no agreed-upon estimate of the government's liability for the added storage costs for commercial spent fuel that will result from further delay in waste acceptance at Yucca Mountain. Nonetheless, we can safely assume that the cost of delay relating to commercial spent nuclear fuel is several times the cost of delay identified for government material since there is nine times more commercial waste than governmental waste. These factors make it even more imperative to prevent further delay in opening the Yucca Mountain facility.

The decision by the President and Congress to proceed with the development of the Yucca Mountain facility in 2002 was gratifying to NARUC and its members. The recommendation of the Yucca Mountain site by Secretary Abraham, the President's decision to concur in the Secretary's recommendation, and the Congress' decision to override Governor Guinn's veto brought much needed attention to the nuclear waste disposal issue. Despite this attention to these issues, the passage of the Congressional resolution reaffirming the federal government's commitment to the development of the Yucca Mountain facility does not end the need for Congressional supervision of and commitment to this program.

In other words, the adoption of the 2002 Congressional resolution should certainly not lead to complacency on the part of any branch of the federal government. The timely opening of the Yucca Mountain facility is not, as this committee well knows, a fait accompli. Although there is some current uncertainty over the date for the submission of the repository license application, given the necessity for Environmental Protection Agency to revise its radiation protection rule for the repository to comply with a court decision announced last summer, the Department of Energy has expressed its intention to submit the license application by the end of this year. Frankly, from NARUC's perspective, the biggest obstacle to the beginning of waste acceptance at the proposed repository in accordance with the Department of Energy's current schedule is the risk of inadequate funding during the next few years.

As a result, NARUC believes that it is vitally important for Congress to take certain specific steps on an expedited basis to ensure that the Yucca Mountain facility opens without additional delay. Most importantly, Congress should make adequate funds available for the licensing, construction, and operation of the proposed facility. Unless adequate money is appropriated for the Yucca Mountain project, the proposed facility will not open in accordance with any schedule that is ultimately adopted. This will result in increased costs to the federal government, the nuclear industry, and the customers of the nation's nuclear generators. Therefore, I repeat, the most important issue for Congress to address in connection with the nuclear waste program at this time is ensuring that adequate monies are appropriated for the Yucca Mountain project.

The history of funding for the Yucca Mountain program is and has been a source of concern to NARUC and its members. Over the past decade, fee revenue has continued to flow into the Nuclear Waste Fund at an ever-increasing level, a pattern that reflects improving nuclear industry productivity. Earnings on the balance in the Nuclear Waste Fund have grown to the point where they have exceeded fee revenue in most years. In the face of this increase in the amount of available resources, annual appropriations have consistently been reduced from the amount requested by the present and past Administrations throughout the last decade.

Although over \$24 billion dollars has been collected for the Nuclear Waste Fund from ratepayers to date, only about \$7 billion has been expended from the fund to support the repository program. This reduces the likelihood that important milestones associated

with the repository program will be met, the most important of which is the date upon which nuclear waste begins moving to the repository for storage. Furthermore, spent nuclear fuel continues to accumulate in 72 locations that were never intended to be indefinite storage facilities. Despite the Nuclear Regulatory Commission's and the nuclear industry's confidence that the present practice of storing spent fuel at reactor sites is safe, NARUC agrees with former Secretary Abraham that permanent storage of nuclear waste at the Yucca Mountain repository would be more secure than on-site storage. NARUC also agrees with former Secretary Abraham that the prospect of further delay in opening the Yucca Mountain facility raises a serious homeland security issue.

The history of the budget process relating to the Civilian Radioactive Waste Management program suggests that there is a risk that past funding problems will continue in the future. The budget struggles for this program over the past several years have resulted in hundreds of millions of dollars in cumulative budget reductions. Further, each year that the program operates under a continuing resolution the DOE program managers are hesitant to make spending plans and commitments in the beginning of those years. Last year, because the Administration assumed that budget reclassification legislation would be enacted in the same year it was proposed, it requested "zero" appropriations from the Nuclear Waste Fund for FY 2006, resulting in the House Appropriations Committee proposing only \$131 million from the Defense Nuclear Waste Fund as the total appropriation for that year. Except for the Senate's failure to mark up the Energy and Water Appropriation bill and the enactment of a continuing resolution funding the

nuclear waste program at the \$577 million amount approved for the previous year, the repository program might have faced fiscal calamity.

These funding difficulties need not persist. There is an obvious solution to the funding problem. The government can sustain the required level of spending for the repository program by using the very funding mechanism contemplated in the Nuclear Waste Policy Act. The \$16 billion balance in the Nuclear Waste Fund, which continues to grow every year, provides more than enough money to permit the Department of Energy to maintain the current schedule, assuming that these monies are actually made available for use in the program. The real problem lies in developing an approach to funding the Yucca Mountain program that ensures that the monies paid in to the Nuclear Waste Fund by the nation's electric ratepayers are actually devoted to the purposes for which that fund was created. The best way to achieve that result is for Congress to reform the process by which monies from the Nuclear Waste Fund are appropriated for repository program activities.

As we understand it, the existing budget rules applicable to the Yucca Mountain program make no distinction between monies appropriated from the Nuclear Waste Fund and other general funds available to the Department of Energy as a whole. As a result, any increase in the amount appropriated for the program from the Nuclear Waste Fund currently must be offset by decreases in expenditures for other Department of Energy programs despite the fact that the nuclear waste program is the only Department of Energy program that can be lawfully appropriately paid for from the Nuclear Waste

Fund. Although the existence of such a limitation might constitute sound budgetary policy in the event that all Department of Energy programs were supported through general appropriations, such a limitation seems overly restrictive given the Nuclear Waste Fund's status as a special fund containing monies contributed by a specific group of Americans for use in a particular way. As a result, NARUC believes that the key to timely completion of the Yucca Mountain project is for Congress to reform the process by which the monies from the Nuclear Waste Fund are made available for use in connection with the repository program.

The manner in which the mechanics of the appropriations process operate is, of course, a matter committed to the sound judgment of Congress and not to an association of State regulators. There are probably a number of acceptable ways for the current problem to be resolved, ranging from modification of the existing budget rules to making the needed reforms to the Nuclear Waste Fund. At this point, we are willing to support a range of alternative methods for reforming the appropriations process as long as the imbalance between the amount of revenue entering the Nuclear Waste Fund and the amount of monies actually expended from the fund in support of the repository program ends.

Any reform, however structured, should ensure that future annual appropriations are limited by the needs of the program rather than the amount appropriated in the past, particularly given that past appropriations were barely adequate for the study period and are totally inadequate for the licensing, construction, and waste transportation phases that lie ahead. There is no question about the appropriateness of measures to assure that

monies from the Nuclear Waste Fund are spent wisely. Those measures, however, should not thwart the entire purpose of the Yucca Mountain program. Assuming that Congress believes that it should cap expenditures from the Nuclear Waste Fund for budget oversight reasons, such expenditures should only be capped at the sum of fee revenues and earnings on the balance of the fund received in a particular year.

As we understand it, expected program needs, even in peak years, should not exceed the total that would be available under the application of such a formula. The Department of Energy projects that \$1.5 billion will be added to the Nuclear Waste Fund each year during the remainder of this decade and that the Department of Defense budget will provide additional appropriations each year toward the repository program. For these reasons, there is no question that the amount of money flowing into the Nuclear Waste Fund, coupled with adequate support from the Department of Defense budget, will suffice to pay for needed work on the Yucca Mountain program over the next several years as we near initial repository operations.

Any reform proposal should also provide that increased expenditures from the Nuclear Waste Fund for support of the repository program would not necessarily result in the reduction of other Department of Energy expenditures. That is because the funds used to support those other programs come from a different source that is not directly tied to the programs in question. A failure to reform the process by which monies from the Nuclear Waste Fund are appropriated for use in the repository program will condemn the Yucca Mountain program to additional years of fiscal uncertainty and undermine the progress

made by the 2002 decision to approve the Administration's recommendation that the program go forward.

NARUC was encouraged by the action taken by this subcommittee and the Energy and Commerce Committee in developing and approving H.R. 3981 during the last Congress. Unfortunately, that bill was not taken to the floor nor acted upon in the Senate.

Nonetheless, the idea of reform was advanced and we are encouraged that the effort could be renewed this year. We were gratified by Chairman Barton's announcement last month that he intended to introduce similar legislation again this year. At its Winter Committee Meetings held nearly a month ago, NARUC adopted a resolution, a copy of which is attached to this testimony. This resolution urges enactment of legislation that has the effect of reforming the budgetary process in order to ensure the timely availability of sufficient funds to enable initial waste acceptance at the repository in 2010 or whatever revised date DOE is currently considers appropriate for initial waste acceptance.

The larger question of future access to the so-called "balance" in the Nuclear Waste Fund is certainly important, but it is not as time sensitive as fixing the annual appropriations process. We also suspect that tapping into that \$16 billion balance will pose some difficulty for Congress because that money has already been used for other purposes so that the existing \$16 billion fund balance is an "I.O.U." that a future Congress will have to honor with dollars that can actually be spent. We hope that our suspicions are unfounded and would welcome an explanation that alleviates our concern.

We are equally uneasy about the “investment returns” that are credited to the Fund. The investment return for FY 2004 totaled \$1.3 billion, almost double the \$732 million in fees collected from utilities during the same period. It is frustrating to see abundant resources reported as reserved for the nuclear waste program, while also seeing annual appropriations that are consistently less than the amount requested in the Budget because of the absence of sufficient funds for the year. While NARUC would like nothing more than to be assured that the Nuclear Waste Fund can be managed exactly as the Nuclear Waste Policy Act envisioned, it is our sense that coupling such a revision in the relevant appropriations rules with legislation similar to H.R. 3981, which has a near-term horizon through 2010, could put enactment of the more immediate reform at risk by trying to do too much at once, even though we would be delighted if it could be done. In other words, NARUC’s highest priority is a practical near-term solution to the most pressing problem faced by the nuclear waste program.

The nuclear waste program is of immense national importance. Having overcome the political hurdle inherent in the vote on the joint resolution in 2002 to move forward with the Yucca Mountain process, the Congress should focus on ensuring that the means to complete the process of licensing, constructing, and operating the repository are made available to the Department of Energy. Nuclear energy is an inevitable component of both our country’s energy present and its energy future. Congress recognized that fact when it enacted the Nuclear Waste Policy Act two decades ago. Congress reaffirmed that determination when it voted to proceed with the repository program in 2002. The nation

needs to move forward to assure the availability of a safe, permanent nuclear waste disposal site for future generations without further delay.

The nation's electric ratepayers have been paying for a nuclear waste repository for over twenty years. It is past time for the ratepayers to get what they have paid for. The best way for Congress to assure that this result occurs is to reform the process of funding the repository program so that monies from the Nuclear Waste Fund are more readily available for use connection with the Yucca Mountain facility. We urge this committee and other relevant committees to make reforming the use of the Nuclear Waste Fund a priority in this Congress, to identify a way to provide stable financing for the program using the ample revenue stream that is available for the purpose, and to enact any legislation necessary to implement that decision.

Thank you for this opportunity to testify. I look forward to your questions.